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CARTER *v.* KEESLING et al.

Sept. 22, 1921.

[108 S. E. 708.]

1. Trusts (§ 191 (1)*)—Life Tenant on Whom "and" Daughter, if She Survived Him, Was Conferred Power to Sell, Had Exclusive Power during His Lifetime.—Under a will bequeathing to testator's son all the residue of his estate, to revert to testator's other children if he and his daughter died without issue, but providing that he "and" his daughter, if she became 21, survived her father and became his heir, or devisee, should have the power to sell and convey in absolute right, such power could be completely executed during such son's lifetime, so as to enable him to pass good title to the purchaser the word "and" meaning "and also."

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 256. For other definitions, see Words and Phrases, First and Second Series, And.]

2. Trusts (§ 202*)—Purchaser from Trustee with Power to Sell and Invest Proceeds Need Not Look to Application of Purchase Money.—Under a will bequeathing to testator's son the residue of his property, to revert to testator's other children if such son and his daughter died without issue, but conferring on him and his daughter, if she survived him, the power to sell the property and invest the proceeds in other property, to be held subject to the same provisions as to reversion, there was no obligation on a bona fide purchaser for full value from such son, without actual or constructive notice of any breach of trust committed or intended to be committed by him, to look to the application of the purchase money, the property being held in trust by the son during his lifetime with a general power of sale and unlimited discretion as to the time and terms thereof.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 256.]

3. Trusts (§ 202*)—Purchaser from Trustee with Power to Sell and Invest Proceeds in Other Property, on Discovering His Intention to Divert Proceeds to Personal Use, Should Pay Money into Court.—Where a purchaser of land from a trustee, with power to sell and invest the proceeds in other property, to be held subject to the provisions of the will as to the reversion, discovered, after a decree adjudging him under no obligation to look to the application of the purchase money, that the trustee intended to use it to pay his own personal obligations, it was his duty, by interpleader, to convene all

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

those interested, and pay the money into court, to avoid liability as particeps criminis in such devastavit.

[Ed. Note.—For other cases, see 13 Va.-W. [Va. Enc. Dig. 256.]

4. Equity (§ 456*)—No Error in Requiring Petitioner to Pay into Court Moneys Due Opposite Party.—Where a purchaser from a trustee under a will with power to sell and invest the proceeds in other property, after a decree adjudging that he need not look to the application of the purchase money, sought leave to file a bill of review on the ground of his discovery that such trustee intended to use the money to pay his personal obligations, the court did not err in requiring that he pay into court the portion of the purchase money past due at the time of such decree, the granting of leave, which is necessary when the bill is founded on newly discovered evidence, and there is no error of law on the face of the record, resting in the sound discretion of the court, which may impose terms.

5. Equity (§ 456*)—No Error in Requiring that Petitioner Pay into Court Money Due Opposite Party, Where Decree Could Be Changed Only to Allow Payment into Court Instead of to Opposite Party.—Since a bill of review on the ground of newly discovered evidence entitles complainant to relief only to the extent that such evidence would have changed the character of the former decree, the court did not err in requiring a purchaser from a trustee under a will with power to sell and invest the proceeds in other property, before being granted leave to file a bill of review on the ground of his discovery that such trustee intended to use the purchase money to pay his personal obligations, to pay into court the amount due under the contract at the time of the entry of the former decree, the only possible change in such decree being to allow payment of the money into court instead of to such trustee, and the relief asked, assurance of a clear title, being afforded by paying the money into court.

Appeal from Circuit Court, Smyth County.

Suit by Creed F. Carter against James B. Keesling and others. Bill dismissed, and complainant filed a bill of review, which was also dismissed. From the decrees, complainant appeals. Affirmed.

Hutton & Hutton and *J. J. Stuart*, both of Abingdon, and *J. P. Buchanan*, of Marion, for appellants.

W. R. D. Moncure, of Marion, and *W. B. Kegley* and *E. Lee Trinkle*, both of Wytheville, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.